

JS 44C/SDNY
REV. 1/2008**JUDGE MARRERO**

CIVIL COVER SHEET

09 CV 7960

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

LOUIS P. PSIHOYOS

DEFENDANTS

APPLE, INC. and APPLE COMPUTERS, INC.

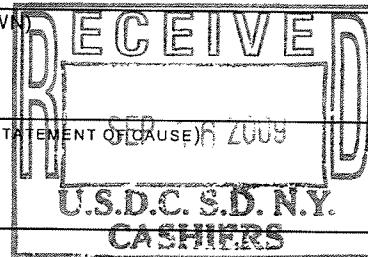
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Dan Nelson (DN4940)
The Nelson Law Firm
100 Park Avenue, 18th Floor
New York, New York 10017

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY))

Copyright Infringement, 17 U.S.C. §§101, et seq.

Has this or a similar case been previously filed in SDNY at any time? No? Yes? Judge Previously Assigned _____If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

PERSONAL INJURY

PERSONAL INJURY

FORFEITURE/PENALTY

BANKRUPTCY

OTHER STATUTES

<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 620 OTHER FOOD & DRUG	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 410 ANTITRUST
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 428 28 USC 157	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 630 LIQUOR LAWS	<input type="checkbox"/> 440 PROPERTY RIGHTS	<input type="checkbox"/> 450 COMMERCE
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 340 MARINE LIABILITY	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 640 RR & TRUCK	<input checked="" type="checkbox"/> 450 COPYRIGHTS	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 460 TRADEMARK	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
<input type="checkbox"/> 152 RECOVERY OF DEFOLTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 380 OTHER PERSONAL INJURY	<input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH	<input type="checkbox"/> 480 CONSUMER CREDIT	<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 490 SELECTIVE SERVICE	<input type="checkbox"/> 510 SECURITIES/COMMODITIES/EXCHANGE
<input type="checkbox"/> 160 STOCKHOLDERS SUITS			<input type="checkbox"/> 700 LABOR	<input type="checkbox"/> 511 HIA (1395ff)	<input type="checkbox"/> 520 CUSTOMER CHALLENGE
<input type="checkbox"/> 190 OTHER CONTRACT			<input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 522 BLACK LUNG (923)	<input type="checkbox"/> 530 12 USC 3410
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY			<input type="checkbox"/> 720 LABOR/MGMT RELATIONS	<input type="checkbox"/> 523 DIWC/DIWV (405(g))	<input type="checkbox"/> 540 OTHER STATUTORY ACTIONS
<input type="checkbox"/> 196 FRANCHISE			<input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	<input type="checkbox"/> 524 SSID TITLE XVI	<input type="checkbox"/> 550 12 USC 3410
			<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 525 RSI (405(g))	<input type="checkbox"/> 560 12 USC 3410
			<input type="checkbox"/> 790 OTHER LABOR LITIGATION	<input type="checkbox"/> 526 IRS-THIRD PARTY	<input type="checkbox"/> 570 12 USC 3410
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					<input type="checkbox"/> 1000 12 USC 3410

Check if demanded in complaint: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE: _____

DEMAND \$ 10,000,000.00 OTHER JUDGE DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

1 Original Proceeding 2a. Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from (Specify District) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judge Judgment

2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> DEF <input type="checkbox"/>	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> DEF <input type="checkbox"/>
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input type="checkbox"/> 1	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input type="checkbox"/> 3	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 5

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Louis P. Psihoyos
443 Juniper Ave
Boulder, Colorado 80304

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Apple Computers, Inc.
1 Infinite Loop
Cupertino, California 90017

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE 9/16/09 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
[] YES (DATE ADMITTED Mo. 06 Yr. 09)
Attorney Bar Code # DN4940

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE MAKRERO 09 CV 7960

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS P. PSIHOYOS,

Plaintiff,

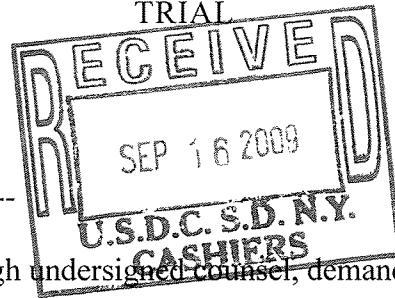
v.

APPLE, INC. and APPLE COMPUTERS, INC.,

Defendants.

Civil Action No.:

COMPLAINT AND
DEMAND FOR A JURY
TRIAL



Plaintiff, LOUIS P. PSIHOYOS, by and through undersigned counsel, demands a trial by jury of all claims and issues so triable, and, as and for his Complaint for Copyright Infringement against defendants APPLE, INC. and APPLE COMPUTERS, INC., hereby asserts and alleges as follows:

JURISDICTION AND VENUE

1. The plaintiff is a resident of the State of Colorado.
2. Defendant Apple, Inc., and its subsidiary, Apple Computers, Inc., (hereinafter collectively "Apple") are foreign corporations domiciled outside the State of New York but are corporations in good standing and licensed to transact lawful business within the State of New York and conduct substantial business in the Southern District of New York.
3. Jurisdiction for the plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, et seq.
4. Venue is proper under 28 U.S.C. §1391 since the misconduct by Apple originated from copyright infringement information obtained from the plaintiff. Further,

Apple conducts business within the State of New York, and has infringed the plaintiff's copyright within the State of New York as described herein.

BACKGROUND FACTS

5. Apple is an American multinational corporation which designs and manufactures consumer electronics and software products.

6. Apple has created a "Top Sites" section in the Safari web browser on its Leopard generation operating system, which provides a way of seeing some of the most popular websites on the screen simultaneously.

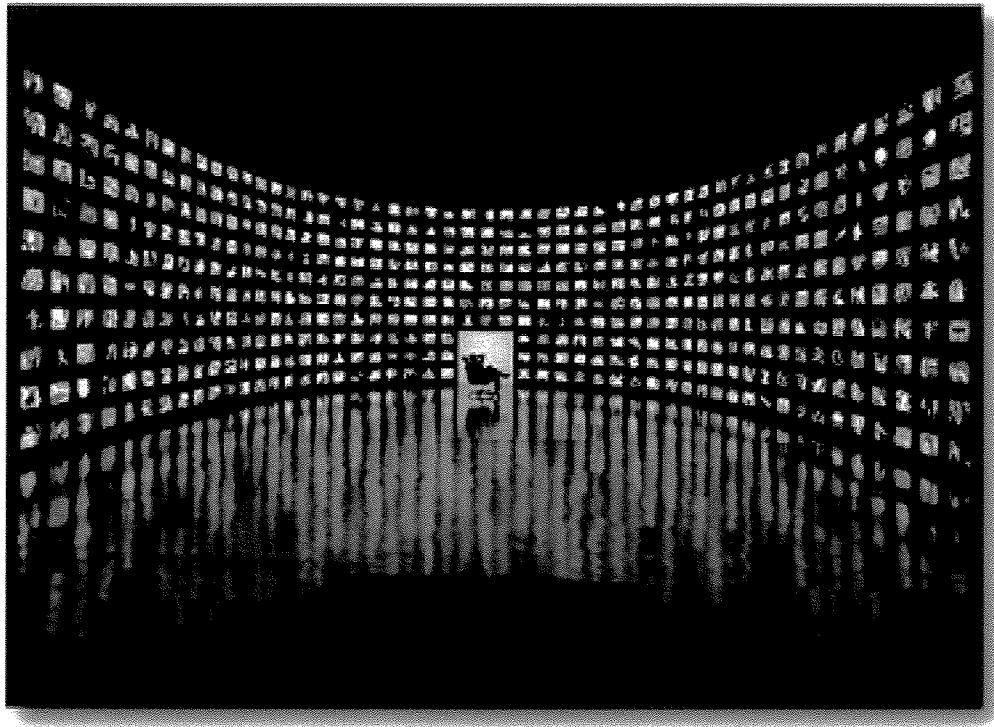
FIRST CAUSE OF ACTION (Copyright Infringement)

7. Plaintiff incorporates paragraphs "1" through "6" as it set forth at length.

8. The plaintiff is the sole owner of the copyright of an iconic photographic image titled "500 TVs." (See Exhibit 1). Plaintiff has complied with the provisions of the Copyright Act, 17 U.S.C. §101, et seq. (See copyright registration attached as Exhibit 2.)

9. Defendant Apple has had access to the subject photograph and had been warned previously to cease and desist in the creation of unauthorized derivative works of the subject photograph.

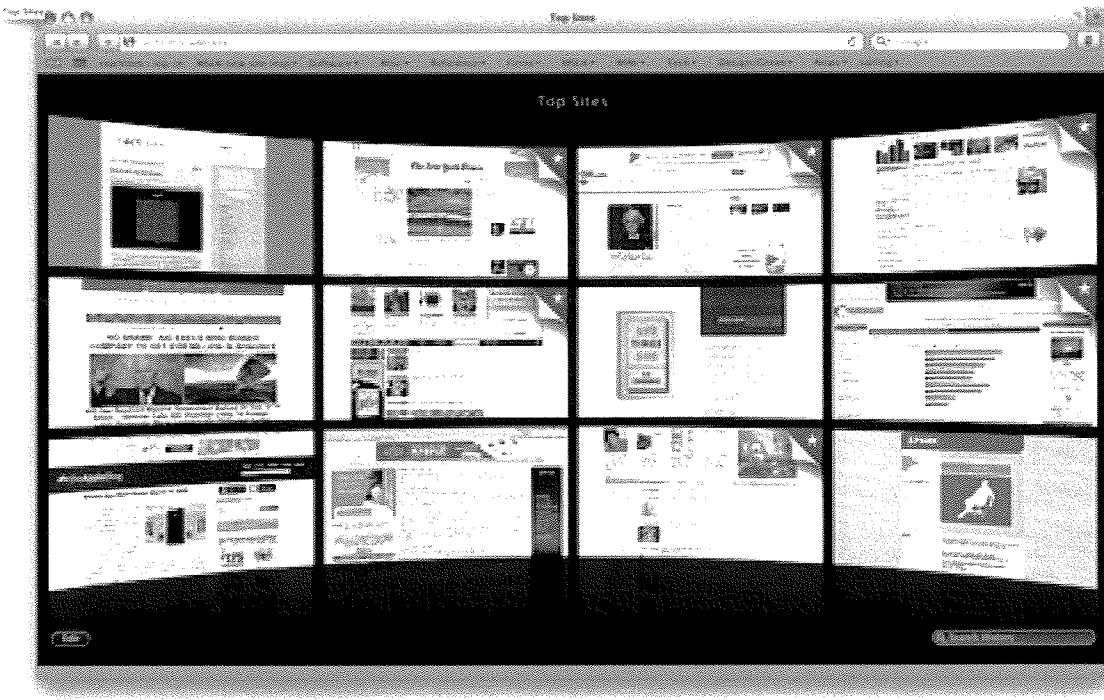
10. The “Top Sites” section on the Leopard generation Safari web browser directly infringes on Mr. Psihoyos’ copyright by incorporating protectable elements of the 500 TVs image without permission.



(Exhibit 1)

11. Without permission or authorization from the plaintiff, defendant Apple has impermissibly used, reproduced, copied, infringed, disseminated or otherwise exploited protectable elements of the plaintiff’s copyrighted image in the Safari browser. *See* “Top Sites” screen shot, attached hereto as “Exhibit 3.”

12. Upon information and belief, defendant Apple has misappropriated protectable elements of the plaintiff’s copyrighted work, as well as elements of previously created derivative works.



(Exhibit 3)

13. By commercially exploiting the plaintiff's copyrighted image without the plaintiff's consent or licensure, defendant Apple has damaged the plaintiff while obtaining significant economic gains in amounts to be determined at trial.

14. Plaintiff is entitled to actual damages including defendants' profits; statutory damages for the infringing use of the 500 TV's; attorney's fees, sustained and which will be sustained, and any other gains, profits and advantages by defendants as a result of defendants' acts of infringement alleged above. At present, the amount of such actual damages, gains, profits and advantages cannot be fully ascertained by plaintiff, but are reasonably believed to exceed \$10,000,000.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court enter a final judgment in its favor and against defendant Apple as follows:

- A. That the Court finds that defendant Apple has infringed Plaintiff's copyrighted 500 TVs photograph.
- B. That judgment be entered for plaintiff and against defendants for plaintiff's actual damages and for any profits attributable to infringements of plaintiff's copyright in the 500 TVs photograph, pursuant to Copyright Act 17 U.S.C. §§ 101 et seq.
- C. That judgment be entered for Plaintiff and against Defendants for statutory damages for each for each and every infringing use of the 500 TVs photograph, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 504(C)(1) and (2).
- D. A jury trial is demanded in this matter.
- E. That the Court grants such other, further and different relief as the Court deems just, proper and equitable under the circumstances.

Dated: September 15, 2009
New York, New York.

Respectfully submitted,

The Nelson Law Firm, PC

By: 
Danial A. Nelson (DN4940)
100 Park Avenue, 18th Floor
New York, N.Y. 10017
T: (646) 704-4900
F: (646) 308-1178

dn@dannelsonlaw.com

Attorney for Plaintiff Louis P. Psihoyos

“Exhibit 2”

Fees are effective through June 30, 2002.
 After that date, check the Copyright Office
 Website at www.loc.gov/copyright or call
 (202) 707-3000 for current fee information.



Registration Number

ATTN: ANDY BERGER
not sent original file ad

VA

VAU

Effective Date of Registration

Application Received

Examined By

Deposit Received

One

Two

Fee Received

Correspondence

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Title of This Work:

1 "501 Monitors"

Alternative title or title of larger work in which this work was published:

Name and Address of Author and Owner of the Copyright:

2 LOUIS PSIHOYOS
433 Juniper Ave.
Boulder, Co 80304

Nationality or domicile: Phone, fax, and email:

Phone (303) 443-3409 Fax (303) 545-9938
Email PSIHOV@aol.com

Year of Creation:

3 1995

If work has been published, Date and Nation of Publication:

4 a. Date OCT 21 1996 (Month, day, and year all required)
b. Nation U.S.A - TIME MAGAZINE

Type of Authorship in This Work:

Check all that this author created.

5 3-Dimensional sculpture
 2-Dimensional artwork
 Technical drawing Photograph
 Jewelry design Map
 Text

Signature:

6 I certify that the statements made by me in this application are correct to the best of my knowledge.* Check one:

Registration cannot be completed without a signature.

 Author Authorized agent

Name and Address of Person to Contact for Rights and Permissions: Phone, fax, and email:

7 Check here if same as #2 above.Phone (212) 477 9500 Fax (212) 477 2845
Email matrixfoto@compuserve.com**OPTIONAL**

8

Certificate will be mailed in window envelope to this address:

Name ▼	JON WELLS, MATRIX
Number/Street/Apt ▼	#46 East 21st Street 3rd floor
City/State/ZIP ▼	New York, N.Y. 10010

 Complete this space only
 If you currently hold a
 Deposit Account in
 the Copyright
 Office.

9

Deposit Account # _____
Name _____

DO NOT WRITE HERE

Page 1 of _____ pages

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999 - 100,000

★U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/54